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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 576 of 1999

in

SPECIAL CIVIL APPLICATIONNo 9629 of 1992

with

SPECIAL CIVIL APPLICATION No 10744 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may
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to see the judgements? YES

2. To be referred to the Reporter or not? YES :

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? NO

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge? : NO
NO

SURAT PANJRAPOLE

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 576 of 1999

MS KJ BRAHMBHATT for Appellants

MR UA TRIVEDI, AGP for Respondent No. 1
MR SN SHELAT, ADVOCATE GENERAL with
MR PRANAV G DESAI for Respondent No. 4 & 6
MR SUNIT S SHAH for Respondent No. 3
MR GN SHAH for Respondent No. 5
MR PRASHANT G DESAI for Respondent No. 2

2. Special Civil ApplicationNo 10744 of 1993
MR JR NANAVATI for Appellants
MR PRASHANT G DESAI for Respondent No.1
MR MR SHAH for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE M.C.PATEL

Date of decision: 27/03/2001

ORAL COMMON JUDGEMENT
(Per : MR.JUSTICE R.K.ABICHANDANI)

1. Both these matters raise common questions and are argued together. The Special Civil Application No. 10744 of 1993 was referred by the learned Single Judge on 4-8-1994 to a Division Bench, and by order dated 4-11-1999, was required to be heard with the Letters Patent Appeal No. 576 of 1999.

2. The common question that arises in these two matters is, whether plots reserved for "Sub Centre" in the Town Planning Schemes can be handed over by the appropriate authority, which in the present case is the Surat Municipal Corporation, for development to other authorities for their use for setting up telephone exchange or offices of the nationalised banks and of the I.O.C., and as to whether such entrustment amounts to variation or change in the Scheme.

3. The Letters Patent Appeal No. 576 of 1999 arises from Special Civil Application No.9629 of 1992, in which the petitioner - Trust through its trustees sought a direction against the respondent - Municipal Corporation to withdraw its decision contained in the resolution No. 86 dated 9-4-1992 passed by the Standing Committee, at Annexure `B' to that petition, by which it was resolved to lease out the lands of final plot No. M/4 sub-plots Nos. P-1, P-3, P-4 and P-5 to the Banks and the Indian Oil Corporation Ltd. as mentioned therein for development on the terms and conditions determined by the Corporation in its General Meeting dated 15-12-1991, and

further prayed for de-reserving the said final plot no. M/4 from the reservation made for "Sub Centre" in the Town Planning Scheme No. 9 (Majura), and to restore the same to the petitioner - Trust.

3.1 The Special Civil Application No. 10744 of 1993 has been filed by a Power of Attorney of the original owners of survey No. 489/1, 489/2/P and 489/2/C of Adajan, raising a similar challenge against the leasing out of the land of final plot No. 33 of the Town Planning Scheme No. 12 which was reserved for "Sub Centre" to the Telecommunication Department for putting up a Telephone Exchange and seeking a direction for setting aside the resolution No. 522 dated 26th May 1993, at Annexure `H' to that petition, passed by the Standing Committee of the respondent - Municipal Corporation, by which it was resolved to handover the final plot No. 33 admeasuring 6527 sq. mtrs. in the Town Planning Scheme No.12 to the Telecommunication Department on lease for development purpose. The petitioners also sought a direction on the Telecommunication Department to handover the possession of the plot back to the respondent Municipal Corporation. The Power of Attorney which is produced on the record was executed on 17th September 1993, whereby it was decided to empower its holder to take steps and to litigate for the purpose of getting the original plots including the land of the original plot No. 491/1 and other lands de-reserved. The power of attorney is described as irrevocable power of attorney and the power of attorney holder is empowered to approach the High Court and the Supreme Court for getting the lands de-reserved.

4. According to the petitioners of Special Civil Application No. 9629 of 1992, from which the Letters Patent Appeal No. 576 of 1999 arises, the petitioner Trust is a Public Charitable Trust, with its objectives to take care of stray, abandoned, weak and handicapped cattle which may be in the process of being sent to slaughter house. The Trust held about 1,76,739 sq. mtrs. of land in the municipal area of Surat. This land was covered in the Town Planning Scheme No. 9 (Majura) as per the original plot No. 5825-C. On reconstitution of the plots, the Trust got final plot No. 5825-C admeasuring 1,24,667 sq. mtrs. and according to the petitioner - Trust, it was deprived of 52,072 sq. mtrs. of land, for which compensation of Rs.3,59,193=00 was paid to the Trust after adjusting the incremental charge. Out of the said land admeasuring 52,072 sq. mtrs., which was placed under reservation (for a sub-center), final plot No. M/4 was demarcated and out of that plot,

sub-plots Nos. P-1, P-3, P-4 and P-5 were carved out. The land of plot No. M/4 admeasuring 6443 sq. mtrs. included some portion of the petitioners' lands. Out of these sub-plots, land of sub-plot No. P-1 admeasuring 2250 sq. mtrs. was allotted to the State Bank of India, the land of sub-plots No. P-3 and P-4 admeasuring 2400 sq. mtrs. were allotted to the Indian Oil Corporation Ltd. and the land of sub-plot No.5 admeasuring 2387 sq. mtrs. was allotted to the Bank of India. Thus, an aggregate of these sub-plots Nos. P-1, P-3, P-4 and P-5 of 10,061.19 sq. mtrs. of land was allotted to these authorities. According to the petitioners, their basic challenge against such a course was that the land which was reserved for "Sub-center" could not have been diverted for the purpose of allotment to such institutions, and that such allotment was not for any public purpose. The grievance of the petitioner - Trust was that it was paid only a sum of Rs.3,59,193=00 for their land, while the Corporation had made a huge profit by transferring a part of such land for nearly Rs.6,87,430=00. The petitioner therefore has challenged the resolution, and seeks de-reservation of these lands for being restored to the petitioner - Trust.

4.1 The Surat Municipal Corporation contested the petition by contending in its affidavit-in-reply that the Town Planning Scheme No.9 had become a part of the Gujarat Town Planning & Urban Development Act, 1976, as provided by section 65(3) thereof after it was sanctioned on 24-2-1984, and came into force from 23-4-1984. The lands in question which were reserved for "sub-center" for public purposes had vested in the Corporation free from all encumbrances, as provided by section 67(a) of the Act, and therefore, the petitioners were not entitled to put up any claim in respect thereof. It is stated that, after the Town Planning Scheme was framed, the petitioners were re-allotted 1,24,667 sq. mtrs. of land and the remaining portion of land was put under reservation for different public purposes like road site, sub-station, site for school etc. The petitioners had taken advantage of the re-allotted plots and had also accepted the compensation worked out after adjustment. According to the respondent - Corporation, the land was being used for public purpose for which it was reserved as it was being utilized for "sub-center". The said Town Planning Scheme No. 9 (Majura) covered a total area of 110 hectors. The local authority had declared its intention to prepare a draft scheme by its resolution No. 41 dated 21-6-1965 and the draft scheme was approved by the State Government on 19-5-1971. The preliminary scheme was prepared under the said Act and sanctioned on

12-12-1980 by the State Government. The preliminary scheme came into force from 27-1-1981 and on its coming into force, all rights of the petitioners were settled and the lands which were meant for public purpose vested in the respondent No.2 - Corporation free from all encumbrances. A final scheme was sanctioned under the notification issued by the State Government on 24-2-1984. According to the Corporation, the Town Planning Officer while determining the value of the land under section 32(1)(iii) of the Bombay Town Planning Act (which corresponded to section 52(3) of the Act of 1976), had decided whether the reservation of the plot was wholly or partially beneficial to the owners or residents of the scheme and as regards plot No. M/4, it was held that it was 3/4th beneficial to the owners or residents of the scheme and 1/4th beneficial to the general public. According to the Corporation, though the expression `sub-center' is not defined, the town planner had opined that the use of land which was reserved for sub-center can be for health center, library, market, school, playground and other public purposes. It is stated in the affidavit in reply that, as per the allotment made to the respondents No. 3 to 5, it was already made clear that the land will be used as per the Town Planning Scheme and Building Bye-laws. It is stated that these respondents were public bodies and they are going to use the land for public purposes. It is pointed out that the Corporation has already handed over the possession of the land in question to the respondents No. 3 to 5 who have paid a total sum of Rs.6,05,60,155=00 to the Corporation. Since the land had vested in the Corporation, there was no scope of any de-reservation of the land.

4.2 The respondents No. 3 to 5 who have been given sub-plots on lease have filed affidavits contesting the petition. The respondent No.5 - Indian Oil Corporation Ltd. in the affidavit in reply filed on its behalf has stated that, an aggregate amount of Rs.3,60,49,330=00 is paid by the I.O.C. to the Municipal Corporation for the sub-plots in question, which admeasure 5424 sq. mtrs. The land was given under the lease deed executed on 26-11-1992 and the I.O.C. has incurred stamp charges of Rs.50,51,150=00 in respect thereof, as also the applicable registration charges.

4.3 In the affidavit in reply filed on behalf of the respondent No.4 - Bank, while contesting the petition, it is pointed out that the respondent No.4 has already made a payment of Rs.1,05,46,875=00 towards the premium for the development rights as well as lease consideration and it has been put in possession of the sub-plot No. P-1

since 21-11-1992. It is stated that the respondent No.4 is established under the State Bank of India Act, 1955, and majority of its shares are held by the Government of India. It is stated that the land in question is going to be used for public purpose. It is contended that the expression `sub-center' derives its colour from the expression `civic-center' and such centers are reserved for locating administrative offices, post offices, banks, clubs, building for recreational and cultural purpose etc. which are in the nature of public amenities provided for the residents of the area. It is also contended that the banking services, apart from being a nerve center for business, commerce and industry, are absolutely essential even for the common man, and that, in the prevailing situation in the city, it was imperative for the local authority to make available land for providing and maintaining essential services such as banking in the area.

4.4 Similar stand is taken in the affidavit in reply filed on behalf of the respondent No.6 - Bank and it is pointed out that the respondent No.6 has already made a payment of Rs.1,98,98,771=00 towards the premium for the development rights as well as lease consideration and that, it has been already put in possession of sub-plot No. P-6, which is going to be used for the purpose of sub-center for which it is reserved, because, it intends to construct a building complex for its administrative offices, training center and branch.

4.5 The respondent No.3 - Bank has also in its affidavit in reply stated that it has already paid a sum of Rs.1,39,63,950=00 towards the premium for the development rights as well as lease consideration and that, it has been put in possession of sub-plot No. P-5, in which it intends to construct a building complex for its regional office and a branch and also to provide residential accommodation for its officers working in the regional office and branches in the city. According to the respondent No.3, sub-plot No. P-5 is thus going to be used for the purpose of sub-center, for which it was reserved.

5. In Special Civil Application No. 10744 of 1993, according to the petitioners, the lands bearing survey No. 489/1, 489/2/P and 489/2/C of Adajan belonged to them. The Corporation declared its intention to make a town planning scheme for the area of Adajan by issuing a public notice on 16-8-1974 under section 22(1) of the Bombay Town Planning Act, 1954. A draft scheme was prepared for the area under sub-section (2) of section 42

of the Gujarat Town Planning & Urban Development Act, 1976 inviting objections, and after considering the objections and following the required procedure, preliminary town planning scheme No. 12 (Adajan) was made under the notification dated 20th April 1977 issued by the Government. The Government in exercise of its powers under section 65 of the Act of 1976 sanctioned the scheme by its notification dated 21st February 1987, fixing 27th March 1987 as the date for the purpose of clause 65(2)(b) of the Act. By notification dated 30th March 1990, the final scheme was sanctioned and the 1st of May 1990 was the date fixed for the purpose of section 65(2)(b) of the Act. The lands of the petitioners were covered by the said scheme. Survey No. 489/1/P became part of final plot No.33 (which included lands of others also), and survey Nos. 489/2/B, 489/2/C and 489/1/P were given final plot No.34. The final plot No.33 was reserved under the scheme for "sub-center" and in the remarks column, it was mentioned that the said sub-center was for school, health center, market etc. According to the petitioners, their power of attorney holder was informed by the Municipal corporation by its letter dated 27th August 1993 with reference to his application dated 26th August 1993 that, the town planning scheme No.12 was sanctioned by the Government and the use of "sub-center" in that regard was shown for the purpose of school, health center and market. According to the petitioners, the reservation of final plot No.33 for "sub-center" became the public purpose as if the same were enacted in the Act and became the statutory purpose in law, which could not be changed and therefore, the respondent Corporation was bound in law to use the said final plot No.33 only for the purpose of "sub-center" namely, school, health center, market etc. and that, it was not competent to change the statutory purpose of reservation under the scheme and make the land available for any other purpose. By resolution No. 522 made on 26th May 1993, the respondent - Corporation gave a lease, for 99 years, of the land admeasuring 6527 sq. mtrs. of final plot No. 33, to the Telecommunication Department, which according to the petitioners amounted to contravention of the provisions of the Act and the Rules, and violated the proprietary rights of the petitioners and contravened the provisions of Article 14, 19(1)(f) and 300-A of the Constitution. The impugned resolution is challenged on the ground that it is illegal, arbitrary and without jurisdiction and contravene the fundamental rights of the petitioners and their proprietary rights. Though in the body of the petition, the impugned resolution is challenged on the ground that it adversely affects the proprietary rights of the petitioners and violates

Article 14, 19(1)(f) and 300-A of the Constitution, in the prayer clause, a direction is sought that the Telecommunication Department should handover the possession of the said plot back to the respondent - Municipal corporation.

5.1 The Municipal Corporation contesting the petition has stated in the affidavit in reply filed on its behalf that, the final plot No. 33 which was reserved for sub-center for Surat Municipal Corporation, was reconstituted not only from survey No. 489/1, but also from revenue survey Nos. 488/1 and 490. The owners of survey Nos. 489/2/B and 489/2/C were given a total area of the said survey numbers and a large part of the area of survey No. 489/1 by reconstituting the final plot No. 34. The final plot No. 33 was reserved for "sub-center" for developing the public facilities like health center, market, offices, post office, bank, telephone centers etc. According to the Corporation, there was no change in the public purpose for which the plot was reserved. It is stated that the uses which were mentioned namely, school, health center, market etc., were not exhaustive but only illustrative, and that the word `sub-center' means a center for public utility services like bus, telephones, shops, school, market, post office, police station etc. and it does not mean only health center, school and market. In the map of the town planning scheme which is attached to the affidavit in reply, it is pointed out that, the final plot No. 33 reserved for sub-center is as per the legend described a plot for public purposes.

5.2 The respondent No.2 - Telecommunication Department of the Union of India in the affidavit in reply filed on its behalf stated that, the final plot No. 33 was handed over to the respondent no.2 on 14-7-1993 and a payment of Rs.1,46,85,750=00 was made to the Municipal corporation, and a possession receipt is annexed at Annexure R/1 to the affidavit in reply. This plot was allotted for the purpose of construction of Telephone Exchange of 25,000 lines in Rander area of Surat city, which was in the interest of public at large. It is pointed out that there is a long waiting list for telephones in Rander area and therefore, it was necessary to construct a telephone exchange at the earliest. The Telecommunication Department is likely to invest an amount of Rs. 20 crores for providing cables and exchange equipment in the interest of public facility. It was necessary to have a bigger plot like 7,000 sq. mtrs. so as to enable the Telecommunication Department to instal telephone exchange having capacity of 25,000 lines.

6. In Special Civil Application No. 9629 of 1992, the learned Single Judge by his elaborate judgement rendered on 1-2-1999 held that the expression `public purposes of all kinds' in section 40(3)(e) of the Act would show that the reservation of land for public purposes was not confined to any particular purpose and that, there may be more than one purpose for which the land may be provided in the scheme. It was held that the word `sub-center' had acquired its definite meaning in the field of town planning and when it was said that a particular land was reserved for "sub-center", it would mean that there will be a center to serve the various purposes which are essentially for the public, living in that area. The learned Single Judge referred to the General Development Control Regulation, 1986, particularly its Appendix `H', which provided for zoning regulations, which showed in the tabulated form that residential zone primarily would include public assistance, institutions, banks and other types of developments, including the places of public assembly, places of public utility and services, civic buildings etc. It was held that if the land is allotted or sold to the banks by the Corporation, it cannot be said that it was beyond the scope of public purpose. It was also held that the very fact that, even the sale of the reserved land is made permissible under section 40(3)(jj) of the Act, goes to show that it was not necessary that the Municipal Corporation should put the land to any use by itself and that it cannot let or sell the land to any other body for public purposes. It was held that the services rendered by the respondents No. 3 to 6 were public utility services and were within the scope of public purposes for which the land was reserved. All the contentions raised by the petitioners were, therefore, negatived and the petition was dismissed, which decision has been challenged in the Letters Patent Appeal.

7. It has been contended before us on behalf of the appellants of Letters Patent Appeal No. 576 of 1999 and the petitioners of Special Civil Application No. 10744 of 1993 that, the land reserved for purposes mentioned in clause (e) of section 40(3) of the Act cannot be disposed of, nor can it be leased to any other authority and it was required to be used by the appropriate authority itself, which in the present case was the Municipal Corporation. It is only the land which was reserved under clause (jj) of section 40(3), that can be sold and since clause (jj) came into force in 1986 after the Town Planning Scheme was finalized, there was no question of the Municipal Corporation being empowered to sell it or

give it on lease. It was also contended that particulars of public purpose were required to be mentioned while reserving the plot for a public purpose in the scheme and that the expression `sub-center' being a vague expression, there was no reservation made for any particular purpose, as was required to be done under clause (e) of section 40(3). It was contended that the use for public purpose should be indicated in view of section 40(3)(e) and 44(b) of the Act, because, otherwise there would be no proper opportunity to the public to raise objections under section 47 against any vague expression like `sub-center'. It was argued that public of the area is entitled to know for what purpose the land is reserved, the kind of purpose should be stated and the proposition that one public purpose is as good as the other is not warranted by the provisions of the Act. It was further contended that section 52(1)(i) of the Act shows that there was a dichotomy maintained between public purpose and the purposes of appropriate authority and therefore, change between public purpose and public purpose of appropriate authority will amount to a variation for which the procedure laid down under section 70 or 71 for variation, would be required to be followed. It was then contended that the plot was reserved for the appropriate authority only and therefore, it cannot be used by any other authority. The counsel further argued that vesting in the appropriate authority of the land under section 67(a) was for a purpose and the appropriate authority did not become an absolute owner so as to become entitled to deal with the property in any manner that it liked. It was also argued that the Telecom Centre, Bank or office of the I.O.C. would not be "sub-center". It was contended that the Telecommunication Department operates throughout the country and not in a sub-center. It was also contended that the respondent Municipal Corporation has profiteered by the transaction in respect of the land reserved for sub-center. The counsel for the petitioner - Trust contended further that the petitioner being a public trust can also use the land for a public purpose, and therefore, it should be restored to the Trust.

7.1 Reliance is placed by the learned counsel appearing for the original petitioners on the following decisions:-

[a] The decision in The Fruit & Vegetable Merchants Union v. The Delhi Improvement Trust, reported in AIR 1957 SC 344 is cited in support of the contention that the land which was required by the appropriate authority vested in the

Corporation only for a limited purpose. In the case before the Supreme Court, by an agreement between the Secretary of State for India in Council and the Delhi Improvement Trust, a certain area of Nazul land belonging to the Government was placed at the disposal of the Trust for `orderly expansion of Delhi under the supervision of a single authority'. The question that had arisen was, whether the land together with the market was government property to which the provisions of the Delhi and Ajmer Rent Control Act were not applicable. It was held that, on construction of the agreement that the title to land on which the market stood was not conveyed by the government to the trust, and that the words `the trust shall hold and manage the said Nazul Estate on behalf of the Government" could not be construed as transferring title to the Nazul land from Government to the Trust. They amounted to constituting the trust as an agent of the Government to hold possession of the property and to manage the same for the purpose for which the trust was created. The Supreme court observed that the word `vest' has not got a fixed connotation so as to mean that in all cases the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. It may be noted that the Supreme Court categorically observed that, in the cases contemplated by sections 16 and 17 of the Land Acquisition Act, the property acquired becomes the property of the Government without any conditions or limitations either as to title or possession, and that the legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration.

[b] The decision in Dr. G.N.Khajuria v. Delhi Development Authority, reported in AIR 1996 SC 253 was cited to point out that, in a case where the land was allotted for a park, it was held that it was not open to the Delhi Development Authority to carve out a portion from the park for running a nursery school. The Supreme court therefore cancelled the allotment in favour of the school giving time to run the school for a period of six months to enable it to make

alternative arrangements.

8. The learned counsel appearing for the respondents argued that the user of the plots in question in these areas was designated for "sub-center" which was a public purpose, because, in sub-centers, the activities which are to be carried out are meant for achieving public purposes. It was argued that the town planning schemes were never challenged by any of these parties and they became final and it was not open for these petitioners now to question the Schemes on the ground that the expression `sub-center' used for the purpose of reserving the land for public purposes was vague, and that they did not understand it. It was contended that expression `sub-center' was well known in the realm of town planning and it covers various activities including the public utility services, government offices etc. in the sub-center in which commercial activities are carried out. It was strongly contended that the title of the original owners in the lands in question was lost and these lands reserved for "sub-center" vested absolutely in the appropriate authority, which in the present case was the Municipal Corporation, free from all encumbrances and the statutory body could deal with such lands for achieving the public purposes in a manner as it may find to be appropriate. It was contended that all activities cannot be carried out by the Corporation itself, and that what was important was the public purpose for which the land was put to use, and not that the Corporation shall itself put it to such use. The Municipal Corporation may itself put the land to such use or may cause it to be so put. All the activities involving public purposes are not performed by the Corporation itself and there are innumerable other authorities which carried out activities which are in public interest and provide for public conveniences. It was argued that "sub-center" can be used for telephone exchanges, banks and other public utility and services, offices etc. for the convenience of the public of the area. Reliance was placed on the guidelines issued by the Centre for Research, Documentation & Training, Institute of Town Planners, India published by the Ministry of Urban Affairs & Employment, Government of India, New Delhi to indicate the variety of activities which can be carried out in commercial centers or sub-centers. It was also argued that the expression `sub-center' will get colour from the context of the town planning scheme and that as per the Regulations, construction activities contemplated in residential zones would include development activity of establishing banks also. It was contended that large amounts were already paid by these statutory bodies to

the Municipal Corporation and that this litigation has thwarted the progress of the work which was intended to be done for achieving the public purposes for which the lands were reserved in the town planning scheme.

8.1 The learned counsel for the respondents relied on the following decisions :-

[a] The decision in Netaji Bag v. The State of West Bengal, reported in J.T. 200 (Suppl.1) SC 181 was cited for the proposition that, in absence of statutory restriction, the action of the State of transferring its property by way of sale or lease is to be tested on the touch-stone of public interest or public purpose. It was held that, when State action is challenged, the initial burden of showing prima facie existence of violation of constitutional mandate is on the person challenging the action. The Supreme Court held that the Constitutional Courts cannot be expected to presume the alleged irregularities, illegalities or unconstitutionality nor the courts can substitute their opinion for the bonafide opinion of the State executive. The Courts are not concerned with the ultimate decision but only with the fairness of the decision-making process. On the facts of the case, it was found that the appellants had miserably failed to place on record or to point out any alleged constitutional vice or illegality.

[b] The decision in Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri, reported in AIR 1996 SC 391 was referred with a view to point out that it is only when the user was to be completely or substantially changed, a prior modification of the development plan would be necessary, and that the general meaning of the word `change' is `to make or become different, to transform or convert'. As held by the Supreme court, in that case, where the plot was sanctioned for building a bus depot was used for a bus depot combined with a commercial use to augment the income of the Corporation for public purpose, the user of the plot could not be said to have been changed.

[c] The decision in Shri Chandragauda Ramgonda Patil v. The State of Maharashtra, reported in J.T. 1996 (9) SC 258 was cited to point out that the

Supreme Court in a case where the town planning scheme was approved for acquiring the land for utilization thereof for the stated scheme, and after utilization of land, surplus land was sought to be used for allotment to some of the councilors and the employees of the Kolhapur Municipality, held, repelling the claim for the land being restituted to the owner that, "We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken way back and vested in the Municipality free from all encumbrances. ..... It is axiomatic that the land acquired for a public purpose would be utilized for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remain unutilised, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification."

[d] The decision in Union of India v. Jaswant Rai Kochhar, reported in J.T. 1996 (3) SC 671 was cited for the proposition that the land sought to be acquired for public purpose may be used for another public purpose. The Supreme Court held that when the notification has mentioned that the land is sought to be acquired for housing scheme but it is sought to be used for District Centre, the public purpose does not cease to be public purpose.

[e] The decision in The Jalgaon Municipal Council v. M.N.Venkatachaliah, reported in J.T. 1991 (1) SC 605 was cited to point out that if construction of commercial building on municipal land is done under an agreement by developer who financed and executed the project, that was not impermissible or arbitrary. It was held that in the ever increasing tempo of urban life, wide range of policy options not inconsistent with the objective of the statute are permissible.

[f] The decision in C. Padma v. Deputy Secretary to the Government of Tamil Nadu, reported in (1997) 2 SCC 627 was cited for the proposition that, where the lands are acquired and have vested in the State under the Land Acquisition Act, the claimants were not entitled to restitution of possession on the ground that original public

purpose had ceased to be in operation or that the land could not be used for any other purpose.

[g] The decision in State of Gujarat v. Shantilal Mangaldas, reported in AIR 1969 SC 634 was cited for the proposition that, under section 53 of the Bombay Town Planning Act, 1954, it was expressly provided that, on the coming into force of the scheme, the lands required for public purpose shall, unless it is otherwise determined in such scheme, vest absolutely in the local authority free from all encumbrances and that the clause contemplated transfer of ownership from private owners to the local authority. The Act was therefore a law for compulsory acquisition of land.

[h] The decision in Rudradhar R. Trivedi v. State of Maharashtra, reported in AIR 1996 SC 3457, was referred to for the proposition that it is a settled law that the land acquired for public purpose can be transferred to another public purpose. Paramount consideration will be service of public purpose and the validity of acquisition cannot be assailed on the ground of such transfer.

[i] The decision in Mayank Rastogi v. V.K. Bansal, reported in AIR 1998 SC 716 was cited to point out that the Supreme Court in a case where plot earlier earmarked as open space was used for construction of a residential house, held that, merely because at an earlier point of time when the respondent had constructed his house, the plot had been sold as an open space, it cannot give a right to the respondent to ask the High Court to prevent the construction on that area when the respondent had chosen not to challenge the change in the land use from open space to a residential as per the approved plan.

[j] The decision of this Court in Kashiben wd/o Pitamber Devchand v. State of Gujarat, reported in Vol. XXX(2) GLR 1176 was cited for the proposition that once a final scheme is prepared, it is deemed to be a part of the Act and the original owner loses all rights over the land and has no locus standi to maintain a petition. In that case, the original purpose for which the development plan was submitted was that the land was reserved for a playground for a school, while

later it was used for the purpose of cottage industries. The Court negatived the contention that since it was not the function of the Municipal Corporation to have cottage industries, the acquisition under the Town Planning Scheme for cottage industries cannot be sustained. It was noted that, under section 40 (3) (e) of the Act, a Town Planning Scheme may make provision for public purposes of all kind and held that, having regard to the purpose for which the plot was intended, it cannot be said that there was no public purpose involved in it.

9. City planning is globally recognised as a normal and identifiable function of the government. As a government function, it involves the coordination of all governmental activities that bear upon community growth and developmental change. The ultimate goals of modern urban planning have always been social with deep involvement with intermediate economic objectives. The physically oriented urban planning has the following environmental objectives :

(i) The orderly arrangement of parts of the city residential, business, industrial - so that each part could perform its functions with minimum cost and conflict;

(ii) An efficient system of circulation within the city and to the outside world, using to the maximum advantage all modes of transportation;

(iii) The development of each part of the city to optimum standards, in terms of lot size, sunlight, and green space in residential areas, and parking and building spacing in business areas;

(iv) The provision of safe, sanitary, and comfortable housing in a variety of dwelling types to meet the needs of all families;

(v) The provision of recreation, schools, and other community services of adequate size, location, and quality;

(vi) The provision of adequate and economical water supply, sewerage, utilities, and public services.

For these purposes, devolution of powers to the cities occurs through legislative acts that delegate

limited self-government to local corporations. By the Constitution (Seventy - Fourth) Amendment Act, 1992, Parts IX & IXA were introduced in the Constitution of India entrusting the planning function to the local bodies. Article 243-W enables legislature of a State to endow Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government with respect to;

(i) preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule. (These include, (i) Urban Planning including town planning, (ii) Regulation of land use and construction of buildings (iii) Planning for economic and social development, and (iv) Public amenities and public conveniences and other items mentioned in the Schedule.)

10. The Bombay Town Planning Act, 1954 was enacted to consolidate and amend the law for the making and execution of town planning schemes enjoining a duty on every local authority to prepare a development plan for the entire area within its jurisdiction. This Act was repealed by the Gujarat Town Planning & Urban Development Act, 1976 with a saving provision in section 124 thereof. It was felt that if planning activities were undertaken on a more rational and scientific basis with reference to development of areas which are not necessarily restricted to the areas within the jurisdiction of local authorities, it will be possible to create better environmental conditions. Therefore, the Act of 1954 was replaced by a more comprehensive legislation.

10.1 Section 18 of the Act of 1954 and section 40 of the Act of 1976 provided for making and contents of a town planning scheme. Under section 40(3)(e) of the Act of 1976, the town planning scheme made by the appropriate authority may, inter alia, provide for "the allotment or reservation of land for roads, open spaces, gardens, recreation ground, schools, markets, green belts, dairies, transport facilities, public purposes of all kinds". Identical provision existed in section 18(2)(e) of the Act of 1954. Section 18(2)(c) of the Act of 1954 provided that a town planning scheme may make provision for "lay out of new streets or roads; construction, diversion, extension, alteration, improvement and

stopping up of streets, roads and communications". Similar provision is contained in section 40(3)(c) of the Act of 1976. The appropriate authority (defined in section 2(iii) of the Act of 1976), is required by section 42 to make and publish draft scheme which as per section 44(b) (corresponding to provision of section 25(b) of the Repealed Act) was required to contain particulars of land allotted or reserved under clause (e) of section 40(3) with a general indication of the uses to which such land is to be put and the terms and conditions for such uses. Developmental activities were restricted by section 49 after the declaration of a scheme. However, it will be significant to note that under sub-section (4) of section 49, the restrictive provisions of section 49 were not to apply to any "operational construction" [which included any construction necessary for posts and telegraphs, telephones, wireless, broadcasting and other like forms of communications, as defined in section 2 (xvii)], undertaken by the Central Government or a State Government.

10.2 In the preliminary scheme, the town planning officer shall under section 52(1) define and demarcate the areas allotted to, or reserved for, any public purpose, or for a purpose of the appropriate authority and the final plots. In the final scheme, the town planning officer shall under section 52(3), inter alia, determine whether the area used, allotted or reserved for a public purpose or purposes of appropriate authorities are beneficial wholly or partly to the owners or residents within the area of the Scheme, and calculate the contribution to be levied under section 79(1) of the Act.

11. On the strength of the above provisions of section 40(3)(e), 44(b) and 52, the main thrust of the argument for the petitioners was that the expression `sub-center' did not indicate any use for a public purpose, nor its kind and that, even if the plot is allotted for a sub-center to the appropriate authority, it is required to be used only by that authority for its statutory functions and for no other purpose, nor by any other authority, be it a Nationalised Bank or Telecommunication Department of the Central Government.

12. The appropriate authority makes a town planning scheme and in doing so, it is required to make provision for any of the matters enumerated in section 40(3)(a) to (l) and for such other matters, not inconsistent with the object of the Act, as may be prescribed. The words `allotment' and `reservation' occurring in section

40(3)(e) have different connotations. In allotment of land, the land is allotted i.e. given or apportioned for the task while reservation of land would mean the act or instance by which the land is put aside or kept back for a later occasion or special use. Thus, when the land is allotted for roads, open spaces, gardens etc., it would reflect that the land is already apportioned for the purpose for which it is to be used. The decision to give or apportion land for any of the purposes mentioned in clause (e) can be taken on the basis of existing needs, while the decision to reserve the land for such purposes would depend on variety of factors which would include the possible future requirements, the environmental changes, the technological advances, the economic activities, social and cultural milieu.

12.1 The objectives underlying town planning get new insights from experience, research and technological achievements. Inherent in the concept of city planning is the recognition that an ideal is not a fixed objective but will itself change, that the ideal city can be striven toward but never achieved. The focus of planning has to turn towards a stress upon the process and direction of change. The interest of the owner and developer of raw land is purely financial and temporary, while the urban community must live with the results for generations afterward; and the city planning would aim not at any single problem but at the continuous improvement of all aspects of the urban physical environment through unified planning of the whole development area. The process of city planning has a cultural as well as a utilitarian value. The factors of city living must be considered as a whole so that the improvement is brought about in the urban environment which would give the city dweller maximum amenity.

12.2 When town planning is expected to take care of changes over a period of time, there is greater need to vest the appropriate authority to reserve land for public purposes of all kinds. Thus, under section 40(3)(e) of the Act, land can be reserved for a public purpose of any kind for which it may be needed in future for the continuous process of developmental changes that may take place in the area covered under the town planning scheme. It would be retrograde to suggest that only land required to be allotted i.e. given or apportioned for the specifically named public purposes can be used for such public purpose and no land can be reserved i.e. kept back or put aside for a variety of public purposes for which it may be required in future by passage of time for a better planning of the city. Such interpretation will

destroy the operational efficacy of section 40(3)(e) which is designed to enable the appropriate authority to make provision to reserve land for all kinds of public purposes for which it may be required even after the scheme comes into force.

13. The services now provided by city governments are different in nature and wider in scope than in the past. The traditional services have been transformed beyond recognition. Public utility services are frequently provided by municipal governments which can do much to assist industry and commerce by good planning and physical development and provide convenient and agreeable services. As municipal functions grow in scope and personnel, there arises need for central location and arrangement. The size of the city served determines the range and number of municipal services required, which, in turn, determine the size of the site. The programme for civic centers in a large city will include not only a City Hall, headquarters for police, fire and welfare departments, court rooms, post office, the central library, but also public utility offices, public health facilities and office space for the municipal, State and Central Governments as well. It is also desirable to include open space in the plan. There should be an architecturally and spatially well planned civic centers. Public utility enterprises which are generally State -owned and State-operated, provide certain classes of services to the public including common carrier transportation, telephone and telegraph, power and light, and community facilities for water, sanitation and similar services. Through the introduction of the machine and mass production, economic life has moved out of domestic environment in an area dominated by devices and processes rather than by individuals, creating the need for more specialized types of buildings for offices, stores, markets, banks, warehouses, exhibition halls, and, structures for transmission and reception of telephone, telegraph, radio, television radar communication, for printing, for factories, laboratories, food processing, distribution, installation and so on. The change in needs have to reflect in the wider range of matters covered by section 40(3)(e) for which the appropriate authority, whose functions are to be viewed in the above constitutional perspective, may make provisions in the town planning scheme not only to meet with the present requirements but also to answer the future needs. There can therefore be a valid reservation, of a particular land, made in the town planning scheme for public purposes for which it is likely to be needed in future. There is no substance in

the contention that the reservation of the plots in question in these two town planning schemes for the public purpose of "sub-center" would not include the public purpose for which the plots are now being put to use, namely for telephone exchange or offices of the nationalised banks or the Indian Oil Corporation.

14. The word `sub-center' is to be understood in context of civil centers which can be effectively located at the population centre, geographic center, or the business centre of the locality. It is a grouping of facilities for the convenience of the public. In the Guidelines published by Centre for Research, Documentation & Training, Institute of Town Planners, India published by the Ministry of Urban Affairs & Employment, Government of India in August 1996, while suggesting "Norms & Standards" in Appendix `B' for urban development plans under the head "Commercial Activity (B.4.00 at page 152) hierarchy of commercial centres is described as "a function of the hierarchy of planning units in an urban centre". Thus, a community planning unit will have a community centre, a district planning unit a district centre, sub-city planning unit a sub-city centre, and, a city planning unit a city centre. The chart of 24 activities which can be provided in the commercial centre is given in para B.4.40 at page 153 of the said official publication. These include commercial offices, service industries, local government offices, telephone exchange, post & telegraph, petrol pump and conveniences. A sub-center is thus a point or an area in a city which has a group of buildings for any or more of these activities. To provide for land for such activities by allotment or by reservation is within the domain of the appropriate authority under section 40(3)(e) of the Act when these constitute any of the objects named or any kind of public purpose. In fact, when the land is needed for the purposes of a town planning scheme, it is deemed to be needed for a public purpose, because, town planning is itself a public purpose. When the land is put aside or kept back for public purpose that may be spelt out at a later occasion, then the appropriate authority will be able to put it to use as and when the need arises for any kind of public purpose. Therefore, land reserved for `sub-centre' without specifying any particular public purpose could be validly used for providing commercial offices, such as banks, telephone exchanges and other public utility offices and conveniences in the process of implementing the town planning scheme. This gives an amount of flexibility to the scheme to answer the ever increasing needs of the society. There is a built in mechanism in

section 40(3)(e) to enable the appropriate authority to set apart land for all kinds of public purposes which can be spelt out by passage of time, as has been done in these two schemes by reserving the plots in question under the head "sub-center" which is well understood in the field of town planning and embraces activities of varying nature in a commercial centre. Therefore, there does not arise any question of variation or change in the scheme when the lands earmarked for `sub-center' are used for any of the activities to be provided in a commercial centre. There is no element of arbitrariness involved when the lands reserved for `sub-centre' are put to such use and the challenge on the ground of violation of Article 14 must fail.

15. To suggest that the appropriate authority which makes the town planning scheme which provides for the allotment or reservation of land for purposes mentioned in section 40(3)(e) which included public purposes of all kinds should itself utilise the land and that it cannot be utilized by any other agency to which the appropriate authority entrusts the development for the purpose of implementing the town planning scheme, would result in stultifying this provision. It is an unfortunate aspect of inner urban planning that the cities that have the means to build a civic centre frequently lack the necessary space, and the cities that have enough space, often lack the proper funds. This is why, under section 23(1), the powers and functions of urban development authority include the power to enter into contracts, agreements or arrangements with any local authority, person or organisation, as it may consider necessary for performing its functions. Thus, its functions of executing the works named or of providing other services and amenities under clause (a) of section 23(1) can be performed by any local authority, person or organisation by resorting to clause (viii) of section 23(1) of the Act. The urban authority or its delegate which is appropriate authority can acquire, hold, manage and dispose of property as it may deem necessary, under section 23(1)(vii) of the Act. It would therefore be naive to suggest that the appropriate authority cannot entrust the developmental work of any plot which is reserved for public purpose to anyone else and should itself do it.

16. The lands which are required by the appropriate authority, unless it is otherwise determined in the scheme, vest absolutely in the appropriate authority free from all encumbrances. The lands required for any public purpose or for a purpose of the appropriate authority

will all vest absolutely in the appropriate authority under section 67(a), on the day the preliminary scheme comes into force. All rights in the original plots which are reconstituted come to an end as provided in section 67(b). There is absolutely no scope for restoring the lands vesting in the appropriate authority to the original owners whose rights are determined. The event is irreversible and no such land can be traced by the original owner in the hands of the appropriate authority which alone can deal with it in exercise of its powers and functions under section 23 of the Act. Even when the appropriate authority is dissolved by a notification issued by the State Government under section 120 of the Act, all properties which are vested in the appropriate authority shall vest in the State Government, as provided in sub-section (2) of section 120. The appellants and the petitioners would be nowhere in picture to pitch any claim even if the land is not actually put to use or is used through some other agency under an arrangement or contract with the appropriate authority for creating a sub-center for any such activity as of establishing commercial offices, telephone exchange, banks, or, providing other conveniences which can be provided in a commercial center. The contention that the proprietary rights of the petitioners are violated is therefore wholly misconceived.

17. Thus, not only the appropriate authority could have itself put to use the land earmarked for the public purpose of a "sub-centre" involving any of the activities which may be provided in a commercial centre, but it could legitimately cause the same to be used by other authorities for such activities, which include commercial offices, telephone exchange or other public utility offices. The appellants and the petitioners of these two cases have no right to insist that the local authority should itself put the lands in question to such use or that they cannot be given for such use to the Telecommunication Department, the Banks, or the Indian Oil Corporation. They also do not have any right to claim these lands on any ground whatsoever, and they must therefore fail.

18. The appellant trust has prayed for dereservation and restoration of land which vested in the appropriate authority, and the power of attorney holder of the petitioners of Special Civil Application No. 10744 of 1993 empowered its holder to get the land dereserved by fling litigation, though there was no statutory provision to dereserve the lands which have vested in the appropriate authority under the Act and the town planning

schemes were never challenged by these parties. These litigations are therefore purely speculative and have resulted in delaying the use of the lands in furtherance of the schemes. The appellants and the petitioners of these two cases must therefore bear the cost of such frivolous litigation, which is quantified at Rs.10,000=00 to be paid by the appellant of the Letters Patent Appeal and Rs.10,000=00 to be paid by the petitioners of Special Civil Application, to the respondent - Municipal Corporation in each case.

19. The Letters Patent Appeal is accordingly dismissed. The Special Civil Application is also rejected. The appellant and the petitioners in these two cases shall pay the costs of the proceedings to the respondent
the parties will bear their own costs. Interim relief stands vacated in both the cases.

MARCH 27, 2001 [R.K.ABICHANDANI, J.]

[M.C.PATEL, J.]
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